ANG ENG CHAN v. PUBLIC PROSECUTOR

[F.C. (Ong Hock Sim, Raja Azlan Shah and Chang Min Tat F.JJ.) December 6, 1977]

[Penang — Federal Court Criminal Appeal No. 19 of 1977]

Criminal Law and Procedure — Charge under s. 58(1) of Internal Security Act — Consorting in security area with person in possession of firearms in circumstances raising reasonable presumption of intention to act in manner prejudicial to public security — No evidence that accused intended to act in prejudicial manner — Internal Security Act, 1960, s. 58(1) and (2).

The appellant had been convicted of an offence under section 58(1) of the Internal Security Act 1960 in that in a security area he consorted with a person in possession of firearms in such circumstances as to raise a reasonable presumption that he intended together with that other person to act in a manner prejudicial to public security. There was no finding by the learned trial judge that the accused intended to act in a prejudicial manner.

Held: the conviction under section 58(1) of the Internal Security Act must be set aside and a conviction under section 58(2) of Internal Security Act substituted for it, that is that the accused was in the company in a security area of a person who had under his control firearm and ammunition in circumstances giving rise to a reasonable presumption that he knew that person had under his control the firearm and ammunition.

FEDERAL COURT.

Appellant in person.

Mohamed Noor bin Haji Ahmad (Deputy Public Prosecutor) for the respondent.

Ong Hock Sim F.J. (delivering the judgment of the Court): The appellant was tried on three charges under the Internal Security Act, 1960 (Act 82 — Rev. 1972) in the High Court at Penang. He was acquitted on the first two charges but was convicted and sentenced under the third charge to imprisonment for life.

At the hearing, we inquired whether he would accept the services offered by a Penang practitioner to argue his appeal. He declined and said he would rely on his written submission, which he had tendered in before the hearing. We heard him and inquired if he had anything to add to that. There were three grounds of appeal, which said the judge was in error in attaching undue weight to the false number plates, spent cartridges and ball bearings found in the kitchen and acting on suspicion. We perused the record with care and were of the view that there was substance in his second ground that there was no evidence to support the charge under section 58(1) of the Act which reads:—

"That you jointly with Sim Ah Nom on the 17th day of October, 1976, at about 4.00 a.m. at house No. 1717, Siram Road, in the District of Butterworth, in the State of Penang, did without lawful excuse, in a security area, proclaimed by the Yang Dipertuan Agung vide Federal Gazette No. P.U.(A) 148 dated 15th May, 1969, consorted with one Ang Cheng Guan, who had in his possession firearms, to wit, (1) a .38 Smith & Wesson Special Revolver Serial No. 93679 (2) a Colt Super Automatic .22 Magnum and (3) a Shot Gun pistol, in contravention of section 57 of the Internal Security Act No. 82 (Revised — 1972), in such circumstances which raise a reasonable presumption that you together with the said Ang Cheng Guan intend to act in a manner prejudicial to public security, and you thereby committed an offence punishable under section 58(1) of the said Internal Security Act No. 82 (Revised — 1972)."

We have set out the charge. There must be proof of the circumstances to raise a reasonable presumption of intention to act with the other accused prejudicially to public security. The learned judge's findings were summed up in his judgment thus:—

(1) There is ample evidence appellant and the first accused were friends.

(2) The appellant gave the first accused shelter in his house.

(3) The first accused was carrying large weapons, namely, three guns.

(4) The first accused was not on a casual visit but "was staying there as a guest for a considerable period of time."

(5) The contents of the plastic bag were discernible and therefore the only inference which can be drawn, especially when accused No. 1 was staying with the accused (appellant) for a few days (not a considerable period of time) was (i) that the accused No. 2 (appellant) knew about the guns in accused No. 1's possession and (ii) knew the purposes for which they were being carried, viz, that together they intended to act in a manner prejudicial to public security.

But the learned judge did not come to any finding on the evidence that the accused intended to act in a prejudicial manner.

We are of the view that there can be little doubt that the appellant knew the accused No. 1 had the arms and ammunition and the proper charge should be under section 58(2) of being in the company, in a security area, of a person who had under his control firearm and ammunition in circumstances giving rise to a reasonable presumption that he knew that person had under his control firearm and ammunition.

The learned deputy conceded this and we accordingly set aside the conviction and sentence under section 58(1) and substituted therefor a conviction under section 58(2) and imposed a sentence of ten years' imprisonment with effect from the date of his arrest.

Order accordingly.

CHANG YUEN YIN v. CHIA SENG YOOK & ANOR.

[F.C. (Lee Hun Hoe C.J. (Borneo), Ong Hock Sim and Chang Min Tat F.JJ.) November 16 and December 16, 1977]

[Kuala Lumpur — Federal Court Civil Appeal No. 49 of 1977]

Land Law — Agreement for sale of land — Absence of sketch plan — Area not demarcated — Agreement void for uncertainty.

By an agreement of sale the respondents had agreed to convey to the appellants a portion of 5 acres of land "as per sketch plan coloured red attached hereto." No plan was in fact attached or could be found.

Held: (1) in the absence of the sketch plan and as the five acres were not demarcated, the agreement should be treated as void for uncertainty;

(2) in all the circumstances the *status quo* should be restored and the respondents should repay the sum paid by the appellant for the purchase of the land.

FEDERAL COURT.

S. Sivasubramanian for the appellants.

Respondents in person.

Ong Hock Sim F.J. (delivering the judgment of the Court): We have carefully perused the Record of Appeal. With respect we are of the view that the appeal should be allowed. Our reasons for doing so, we now set out.

The only question, in our view, is one of construction of Clause 2 of the agreement of November 9, 1961 between the respondents as vendors and appellant as purchaser. By that agreement, the vendors purported to convey that portion of 5 acres of the said land *as per sketch plan coloured red attached hereto* (emphasis ours). When asked counsel for the appellant said he was not aware of and could not produce the said sketch plan. There appears no dispute that some land of 5 acres had been occupied and developed by the appellant, at least since 1970, when the Grant or Title was issued. The respondents did not deny that they had entered into the said agreement for sale of the 5 acres. The disagreement apparently was over the contribution or payment by the appellant of the cost of sub-division and transfer. We would quote the judgment which says: —

"Another evident fact was that in the agreement the cost of sub-division was to be borne fully by the plaintiff but in the Statement of Claim it was stated that the defendant was to partition the land at their own cost and expense."

We differ, with respect again with the learned judge as to Clause (2) of the Agreement. In our view, the respondents undertook: —

"*at their own expense* to take all necessary steps immediately *to extract a proper title* of the said land from the Government of Pahang *and immediately thereafter* upon issue of such title by the Government of Pahang *to apply for a sub-division* of the said land and a separate title of the aforesaid portion of 5 acres of the said land obtained and legally transferred to the Purchaser;"

We have, italicized those portions to emphasise the vendors' obligations, and we note the semi-colon at the end thereof. That semi-colon, in our opinion, made clear that "necessary fees and other expenses *in connection with the transfer* of the aforesaid portion of the said land shall be borne by the purchaser." Again we have underlined what we consider the material words for consideration and we conclude that the learned judge was in error when he said: —

"'Indeed, in their letter to the defendant(s) the plaintiff's counsel reminded the defendant(s) that they must comply with clause (2) of the agreement (P1) which required them to sub-divide at their own cost' (We think quite rightly) but 'Clearly, if there had been no compliance, therefore, it was the plaintiff and not the defendant(s) (sic) because the duty to pay the cost of the said sub-division was entirely the plaintiff's not the defendant(s) (sic)' (We think the learned judge was here in error)."

The difficult question on a close scrutiny of the case is really what we can do for the parties. It is not denied by respondents that they had entered into an agreement (P1) for the sale of the 5 acres. They say, however, that the terms were not as agreed. We cannot go behind the terms of P1 and no evidence was adduced of any variation of the terms. In the absence of the sketch plan, also that the five acres were not demarcated (there being no sketch plan, as admitted by appellant's counsel) we are of the view that the agreement should be treated as void for uncertainty, that specific performance cannot be decreed while the area is unspecified and alienation or sub-division will have to be decided by the Government of Pahang, and in all the circumstances of the case, the *status quo* be restored. We therefore set aside the order of the court at Kuantan and order instead: —

(1) That the respondents do repay the sum of $3,000 paid by the appellant under the agreement of November 9, 1961;

(2) That upon repayment of the said sum, the appellant do vacate and give up possession of the said 5 acres of land now occupied by her;

(3) That the costs of this appeal be borne by the parties themselves;

(4) That the deposit in connection with the appeal be refunded to the appellant; and

(5) That the costs of the appellant in the High Court be taxed in accordance with the scale laid down for an appeal from the Sessions Court and paid by the respondents.

Order accordingly.

Solicitors: *S. Sivasubramanian.*

LEHA BINTE JUSOH v. AWANG JOHARI BIN HASHIM

[F.C. (Ong Hock Sim, Raja Azlan Shah and Chang Min Tat F.JJ.) December 8, 1977]

[Penang — Federal Court Civil Appeal No. 77 of 1976]

Contract — Agreement of sale of land — Person agreeing to purchase, a minor — Contract void — Whether vendor holds land in trust for purchaser — Return of purchase price — Contracts Act, 1950, ss. 10, 11 and 66.

The respondent had alleged that he had entered into an agreement for the purchase of certain lands belonging to an estate of which the appellant was the administratrix. At the time of the alleged agreement the respondent was a minor. The learned trial judge held that the agreement was void but he went on to hold that the purchase price having been paid in full and the respondent let into possession, a constructive trust had been created and the deceased held the lands in trust for the respondent. The appellant appealed.

Held, allowing the appeal: (1) to import a constructive trust in this case and grant a declaration that the appellant as administratrix held the lands as trustee for the respondent and that the respondent was entitled to possession of the lands was in effect to enforce an agreement which was void *ab initio*;

(2) an order should be made for the purchase price to be repaid on the respondent vacating the lands.

Cases referred to:-

(1) *Mohori Bibee* v. *Dhumodas, Ghose* 30 I.A. 114.

(2) *Suraj Narain Dube* v. *Sukhu Aheer & Anor.* A.I.R. 1928 All. 440.

FEDERAL COURT.

A. Jayedeva for the appellant.

Lee Kok Liang for the respondent.

Ong Hock Sim F.J. (delivering the judgment of the Court): This is an appeal from the decision of Syed Agil Barakbah J. made on June 1, 1976 at the High Court, Alor Star, allowing, with costs, a claim